



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0393; FRL-9995-42-Region 5]

Air Plan Approval; Ohio; Open Burning Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the open burning standards in the Ohio State Implementation Plan (SIP) under the Clean Air Act (CAA). On June 4, 2018, the Ohio Environmental Protection Agency (Ohio) requested the approval of its revised open burning rules, which include changes pertaining to certain types of open burning, adding requirements for air curtain burners, allowing law enforcement to burn seized drugs, further restricting the materials that may be burned, and updating definitions and references. Ohio is in attainment of the National Ambient Air Quality Standards (NAAQS) for particulate matter.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0393. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886-6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6524, rau.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. Public comments
- III. What action is EPA taking?
- IV. Incorporation by Reference.

V. Statutory and Executive Order reviews.

I. Background

Ohio submitted revisions to Ohio Administrative Code (OAC) Chapter 3745-19, "Open Burning Standards," on June 4, 2018. To satisfy a state requirement to review its rules every five years, Ohio had reviewed and revised its open burning rules and requested EPA approval of revised OAC rules 3745-19-01, 3745-19-03, 3745-19-04, and 3745-19-05 as changes to the existing Ohio SIP. The rules are effective at the state level as of April 30, 2018.

EPA evaluated the revisions to Ohio's open burning standards under the CAA and compared the revised rules to the rules that EPA has previously approved into the Ohio SIP. EPA finds that the revised rules will not interfere with continued attainment and maintenance of the NAAQS for particulate matter and meet CAA section 110(l) requirements. On December 26, 2018 (83 FR 66197), EPA proposed approval of the revised open burning rules into the Ohio SIP. A more detailed analysis of each rule revision is found in the notice of proposed rulemaking.

II. Public comments

EPA received two anonymous comments during the 30-day comment period on the December 26, 2018 proposed rule.

The first comment received stated that, "All of this rule should be tightened up to prevent air pollution." The first

commenter was concerned that emissions from open burning do not stay in Ohio, those emissions impact states to the east more than Ohio itself, and thus the Ohio rules should be stricter.

The second comment received stated that, "The proposed revisions to Ohio's open burning standards are agreeable." The commenter stated that emissions from open burning are not expected to increase as result of the revise Ohio regulations, but did ask two questions: 1) what will happen if the open burning emissions are not the same after the SIP revision and thus are more than expected; 2) does EPA have "targets for emission" in Ohio?

EPA Response: Ohio's open burning rules are written to minimize the impact of emissions from open burning on the public. The rules require notification of those anticipated to be impacted and encourage the burning to occur during favorable conditions to help minimize those impacts.

EPA evaluated Ohio's SIP revision request by comparing the OAC 3745-19 rules as submitted to the rules as approved into the Ohio SIP. As explained in the proposal (December 26, 2018, 83 FR 66197), EPA evaluated the open burning revisions under the CAA. EPA's analysis found the public will continue to be protected following the rule revisions. Both Ohio and the EPA anticipate that the revisions to the open burning regulations will result in a negligible increase in emissions. For example,

changing the definition section and the numbering of the regulations should have no impacts on the amount of emissions. The revision moving prescribed burning activities¹ from OAC 3745-19-03(D)(4) to OAC 3745-19-03(C)(4), changes the requirement from obtaining prior permission to burn, in writing, to providing the state agency with notification to burn. This rule revision is unlikely to increase emissions because the requirements in OAC 3745-19-03(C)(4) are as stringent as the requirements in OAC 3745-19-03(D)(4). If any increase in emissions from open burning were to interfere with attainment or maintenance of the NAAQS, interfere with visibility, or otherwise adversely impact public health, Ohio and EPA have the authority to take necessary action to address such emission increases.

Regarding the second commenter's question, EPA does not have specific "targets for emissions" from open burning in Ohio. However, there are generally applicable legal requirements such as the NAAQS for PM-10 and PM_{2.5} that all areas of the state must meet. Federal and state law require emission reductions of a pollutant or multiple pollutants for purposes of attaining and maintaining the NAAQS. These obligations may include restrictions on emissions from specified sources or activities set at a level expected to bring the area into attainment of the

¹ Horticultural, silvicultural, range management, prairie and grassland management, invasive species management, or wildlife management fires

relevant NAAQS. Ohio is in attainment of NAAQS for PM-10 and PM_{2.5}.

III. What action is EPA taking?

EPA is approving revisions to the open burning standards into the Ohio SIP. EPA is approving OAC 3745-19-01, OAC 3745-19-03, OAC 3745-19-04, and OAC 3745-19-05, effective at the state level on April 30, 2018.

IV. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov, and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final

rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

V. Statutory and Executive Order reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

² 62 FR 27968 (May 22, 1997).

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final

rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 11, 2019.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1870, the table in paragraph (c) is amended by revising the entries for 3745-19-01, 3745-19-03, 3745-19-04 and 3745-19-05 under “Chapter 3745-19 Open Burning Standards” to read as follows:

§ 52.1870 Identification of plan.

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(c) * * *

EPA--APPROVED OHIO REGULATIONS

Ohio Citation	Title/Subject	Ohio effective Date	EPA approval date	Notes
* * * * *				
Chapter 3745-19 Open Burning Standards				
3745-19-01	Definitions	4/30/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
* * * * *				
3745-19-03	Open burning in restricted areas	4/30/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
3745-19-04	Open burning in unrestricted areas	4/30/2018	[insert date of publication in the Federal Register], [Insert Federal Register citation]	
3745-19-05	Permission to	4/30/2018	[insert date of	

	individuals and notification to the Ohio EPA		<u>publication in the Federal Register</u>], [Insert Federal Register citation]	
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[FR Doc. 2019-13111 Filed: 6/21/2019 8:45 am; Publication Date: 6/24/2019]